

**BEFORE THE MARYLAND HEALTH CARE COMMISSION**

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IN THE MATTER OF )

APPLICATION OF SUBURBAN )  
HOSPITAL, INC. FOR A LIVER )  
TRANSPLANT SERVICE )

Docket No. 17-15-2400 )  
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**MEDSTAR FRANKLIN SQUARE MEDICAL CENTER’S REPLY TO SUBURBAN  
HOSPITAL, INC.’S OPPOSITION TO ITS CONDITIONAL MOTION TO STAY**

On October 15, 2018, the University of Maryland Medical Center (“UMMC”) filed a Motion for Stay of the Certificate of Need Review process (the “Motion”) as to MedStar Franklin Square Medical Center’s (“MFSMC”) application for kidney and liver transplant facility services in Maryland Health Care Commission Docket Nos. 17-03-2405 and 17-03-2406. The stated premise of the Motion was that a pending change in the kidney and liver allocation policies by the Organ Procurement Transplant Network (“OPTN”), as implemented by its contract with the United Network for Organ Sharing (“UNOS”) policy, will render “obsolete” the existing Donation Service Area (“DSA”) as a basis for organ allocation, and render moot any justification for MFSMC’s programs. *See generally* Motion at 10-13.

On November 5, 2018, MFSMC filed its Opposition to that Motion. MFSMC continues to oppose that Motion. On the same day that MFSMC filed its Opposition, MFSMC also filed a conditional motion (“Conditional Motion”) to stay the review of Suburban Hospital, Inc.’s (“Suburban”) application for a Certificate of Need (“CON”) in this proceeding. MFSMC did so because it believes that, in the event the Commission determines that a pending change in liver allocation policy requires a stay of CON applications until new policies can be proposed,

implemented and evaluated, then all pending applications for transplantation services should be stayed.

Suburban has since filed a 12-page response (“Response”) to MFSMC’s two-page Conditional Motion. The first portion of that Response agrees with MFSMC’s position that the UMMC Motion should not be granted. Conversely, the remainder of the Suburban Response states that the review in the instant proceeding should go forward even if UMMC’s Motion is granted and MFSMC’s applications are stayed. As Suburban states:

Yet even if the Commission had the power to issue a stay, and even if issuing a stay in response to policy changes could be done without prolonging the CON procedure well past its breaking point, the Commission should still deny MedStar's motion. Suburban has identified a need for a second liver transplant service in the Washington metropolitan area *now*.

Response at 2.

MFSMC respectfully submits that this argument misconstrues the Conditional Motion. It is axiomatic that an applicant for a Certificate of Need believes there is, indeed, a need to be filled. That is why both MFSMC and Suburban have opposed UMMC’s motion.

However, if the Commission determines that the review of any application across the new geographical allocation scenario under consideration by OPTN should be “stayed” until the new policy is i) finalized, ii) adopted and iii) implemented, then all parties with pending applications must be subject to equal consideration.

In summary, given the relatively proximal locations of programs in the context of pending new OPTN guidelines for organ allocation, MFSMC respectfully requests that if the Commission decides to grant the UMMC motion and stay CON review of MFSMC’s transplantation service applications, it also stay CON review of Suburban’s application in this proceeding.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on December 5, 2018, a copy of the foregoing Motion was served by e-mail and first-class mail on:

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